
(2005) 12 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 4834 of 1999

Rudramani Tripathy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 101 CLT 227

Hon'ble Judges : N. Prusty, J;B.P. Das, J

Bench : Division Bench

Advocate : J.K. Rath, S.N. Rath and D.N. Rath, for the Appellant; P.K. Parhi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

N. Prusty, J.—The petitioner, who was working as S.I. (CD.) under 114 BN C.R.P.F. at Bhubaneswar and removed from service in a disciplinary proceeding by order dated 27.8.1996 passed by the D.I.G., (P) C.R.P.F., Special Range, confirmed by the appellate order dated 4.6.1997 passed by the Inspector General of Police, C.R.P.F. and the revisional order dated 10.3.1999 passed by the Director General of Police, C.R.P.F., has filed this present writ application for quashing the above impugned order under Annexures 5, 7 and 9 and for a direction to the opposite parties to reinstate him in service with usual service benefits with effect from 15.9.1994.

2. The petitioner's case is that after returning from UNTAC duty in Combodia as a part of Indian Police Contingent from August, 1992 to October, 1993 the continued to work in his post under 114 BN, C.R.P.F., Bhubaneswar and sometime thereafter he became seriously ill as he was suffering from P.I.D. He was under treatment of the Medical officer, 114 BN, C.R.P.F., Bhubaneswar and also under the Medical Officer, G. C. Hospital, C.R.P.F. Since he did not recover from the above ailment he was referred by the authority to the Orthopaedic Specialist, Capital Hospital, Bhubaneswar for further treatment where the disease

was diagnosed as P.I.D. The petitioner was advised full medical rest. Thereafter he represented the concerned authority to treat the absence period as medical leave and further to release his salary and other dues (Annexure-3 series). The opposite parties in order to ascertain the factum of illness of the petitioner called for a report from the treating physician, Government Hospital, Unit-6, Bhubaneswar for a second medical opinion. A Medical Board was constituted to examine the petitioner as per the direction of the authorities and the C.D.M.O., Khurda. The petitioner was produced before the Board on 19.11.1994 for re-examination and the Medical Board after examining the petitioner confirmed the fact of illness. The petitioner after a prolonged treatment was declared fit by the Medical Officer, Orthopaedic Specialist, Capital Hospital, Bhubaneswar on 18.9.1996 and thereafter he was" advised to resume his duties. Even though the petitioner was residing in his quarters inside C.R.P.F. campus, Bhubaneswar and continuing his treatment, his salary was stopped and he was declared as "deserter". Coming to know the above facts, the petitioner represented to the authorities on 19.3.1996 requesting them to treat the absence period as Medical/ Commuted leave and further requested to recall and/ or correct the order of treating him as a "deserter". In spite of all the representations made by the petitioner along with the supporting documents of his illness, a Departmental Proceeding/Enquiry was initiated against him holding the period of his treatment as unauthorized absent from duties. Even though no notice to show cause or charge sheet was served on him and he had not been intimated regarding initiation of a disciplinary proceeding, to his utter surprise he received a letter from the Commandant, 114 BN, CRPF/Enquiring Officer (E.O.), directing him to remain present for cross-examination of witnesses and to prepare his defence within fifteen days. The petitioner after receiving the above letter requested the E.O. to send copies of charge sheet and statement of witnesses and further requested the E.O. to permit him to prepare his defence within a period of one month after the above documents are supplied to him. The opposite parties instead of supplying the documents to the petitioner served a copy of the gist of the report of the E.O. asking for a parawise comment from him. As the petitioner did not have the charge sheet and statement of witnesses, he was not in a position to give his reply. While waiting for receipt of the documents/reply from the Enquiring Officer, he received the order-dated 27.8.1996 of the Disciplinary Authority/D.I.G. (P), C.R.P.F., Special Range removing him from service on a finding that he was not suitable to be retained in the post. The case of the petitioner is that the impugned order of opposite party No.3 imposing punishment of removal from service was passed by the Disciplinary Authority without affording him any reasonable opportunity of hearing, which is against the principle of natural justice, and as such it is not sustainable in the eye of law.

3. The petitioner preferred an appeal before the Inspector General of Police, CRPF, challenging the order dated 27.8.1996 (Annexure-5), in which he had specifically stated that even though the concerned authorities were well aware of his illness till 18.9.1996 and were having all the documents and the medical

certificate to that effect, starting a disciplinary proceeding against him alleging his period of ailment as unauthorized absence from duty, is illegal; that they did not supply him the charge sheet, statement of witnesses; that he has never received letters alleged to have been sent to him, he came to know all these things with regard to the enquiry only after receipt of letter dated 28.5.1996 of the Enquiry Office directing him to remain present for cross-examination of witnesses and to prepare his defence within fifteen days and only thereafter he requested the Enquiry Officer on 10.6.1996 to send copies of the charge sheet, statement of the witnesses as those were not supplied to him earlier and also he asked for one month time to prepare his defence; that while the petitioner was waiting for the reply of the Enquiry Officer, he received a copy of the gist of the report of the Enquiry Officer from the Disciplinary Authority, DIG(P) Special Range for parawise comments; That he was not in a position to file any reply/ parawise comments since the above documents have not been supplied to him even though he had requested for supply of the same immediately after receipt of the letter dated 18.5.1996 of the Enquiry Officer; and as such without affording the petitioner a reasonable opportunity for defending himself in the disciplinary proceeding and without following the principles of natural justice, the order of punishment of removal from service was communicated to him by the authorities. The appellate authority without considering all the above facts as well as the grounds taken by the petitioner in his memorandum of appeal confirmed the order of the disciplinary authority.

4. Even though the petitioner preferred a revision before the Director General of Police, CRPF, taking all the above grounds, the revisional authority also without considering the matter in its proper perspective confirmed the order of both the disciplinary authority and the appellate authority. Hence the petitioner preferred this writ application.

5. The opposite parties have filed their counter affidavit denying all the allegations made by the petitioner in this writ application. In the counter affidavit, the opposite parties have stated that the petitioner disobeyed the orders of his superior/ controlling authority during period of his service and remained absent from duty on flimsy ground for a period of one year and during that period engaged himself in private business of running a Medical shop in front of GC CRPF Campus, Bhubaneswar without permission of the competent authority, which is violative of CCS Conduct Rules. Even though the petitioner was asked to produce all the relevant papers required for regularization of his leave period on medical ground, for scrutiny, he never produced the same. When the petitioner was detailed for training as National Security Guard (N.S.G. in short), he reported his sickness to avoid the training and thereafter he remained absent unauthorisedly. The petitioner was asked to report to the A.M.A/M.O. I/C HC, CRPF Hospital, Bhubaneswar along with the opinion of the specialist of Capital Hospital repeatedly (Annexures A to A/10), but he did not bother to comply with the lawful orders of the Commandant. He submitted a fitness certificate to resume in duties on 18.9.1998 i.e. after he was removed from

service with effect from 27.8.1996. He was given ample opportunities by the Commandant, 114 BN, CRPF to present himself before the Medical Officer in charge along with all documents for scrutiny, but he failed to comply with the direction and only therefore the departmental enquiry, was started against him, which was finally concluded with the order of his removal from service. All the documents concerning Departmental enquiry were sent to the petitioner with his notified residential address as well as his permanent home address. The documents which were sent by post in his notified/residential address returned undelivered with one or other reasons. The petitioner avoided to receive the communication sent in his notified/ residential address. However, the letters/ documents sent in his permanent home address did not return, which indicates that those letters/documents were delivered there at his home. All the reasonable opportunities have been given to the petitioner to defend himself during the entire proceeding, but he did not avail the same, rather he chose to avoid the same. Considering all the materials on record, the impugned orders have been passed by the concerned authority and as such there is no illegality or irregularity in the orders of the Disciplinary authority, Appellate authority as well as the Revisional authority:

6. In course of hearing, Mr. J.K. Rath, learned Counsel for the petitioner submits that since the charge sheet as well as the statements of witnesses were not supplied to the petitioner before calling for a reply, the method adopted in the Disciplinary proceeding is violative of the principle of natural justice. The charge sheet ought to have been served on the petitioner much prior to commencement of the Disciplinary proceeding and the petitioner ought to have been directed to file his show cause to the charge sheet. Only after admission or denial of the charges, the Enquiry Officer ought to have been appointed to enquire into those charges which were denied by the petitioner. The concerned authorities have not followed the cardinal principle of Departmental proceeding. Even though after receipt of the report of the Enquiry officer from the Disciplinary authority along with the direction calling for a reply from the petitioner, when the petitioner specifically asked for copy of the charge sheet as well as statement of witnesses, the same ought to have been supplied to him before the final order is passed by the Disciplinary authority. In this case, without supplying the above materials, which are very much required for filing the reply, the Disciplinary authority has arbitrarily passed the final-order in the disciplinary proceeding. Mr. Rath further submits that even though all the above grounds were raised in the memorandum of appeal as well as in the revision petition, both the appellate authority and the revisional authority in their respective orders, have not whispered a single word as against the above allegation. In view of the above, the impugned orders are not sustainable in the eye of law.

7. Mr. Padhy, learned Counsel for the opposite parties, submits that all the reasonable opportunities have been afforded to the petitioner for defending himself during the entire proceeding but he failed to avail the same. In that view of the matter, there is no illegality or irregularity in the disciplinary proceeding

and also there is no infirmity in the impugned orders. All the documents were sent to the petitioner in his notified/recorded address as well as in his permanent home address. Only the documents sent in the recorded address i.e. Qr. No. 16, Type-1, Special G.C., CRPF, Bhubaneswar, returned undelivered but those were sent in his permanent home address did not return which clearly indicates that those documents were delivered at his home (permanent place of residence). After receipt of his letter dated 19.3.1996 giving a new address for supply of the documents, he was asked to collect those documents from his permanent home address, which were received there. Time and again the documents in all stages of enquiry were sent to him in his notified address as stated above, but the petitioner avoided to receive the same. As such, the petitioner was given reasonable opportunity to defend himself at each Stage of enquiry proceeding and he himself avoided to avail the same and hence the rules of natural justice can never said to have been violated in this case, rather that has been followed at each stage of the enquiry.

8. To our specific query as to whether the Department have any material with them that they have supplied the charge sheet as well as statements of witnesses to the petitioner, when the petitioner asked for those documents after receipt of the letter from the Enquiry Officer directing him to remain present for cross-examination and to prepare his defence, by registered letter dated 10.6.1996, learned Counsel submitted that much prior to that date all the documents were supplied to the petitioner and therefore no further reply was required to be given in that regard.

9. Even though Mr. Rath, learned Counsel for the petitioner has cited the decisions of the Apex Court in the case of Union of India and Others Vs. Dinanath Shantaram Karekar and Others, , Baradakanta Mishra Vs. High Court of Orissa and Another, and a decision of Lucknow Bench of Allahabad High Court in the case of Janak Lal Verma v. Union of India, he mainly argued that Rules of natural justice have not been followed in the case of the petitioner as he was not supplied with the required documents at different stages of enquiry, thereby he was debarred from defending himself during the enquiry /proceeding as well as the grounds taken by the petitioner in the memorandum of appeal and the revision petition have not been properly dealt with and answered by both the authorities.

10. Considering the submissions made by the learned Counsel for both the parties, it is to be seen as to whether all the documents in connection with the disciplinary proceeding at different stages beginning from the stage of service of the memorandum of charges have been served; reasonable opportunity has been given to the delinquent to defend himself; rules of natural justice have been followed; and both the Appellate and the Revisional authorities have passed reasoned order or not. A bare perusal of all the documents relied upon and filed by the respective parties clearly indicates that the required documents were sent to the delinquent both in his notified/recorded residential address as well as, in

his permanent home address at different stages of the enquiry/proceeding. The letters along with the documents which were sent in the recorded residential address of the petitioner were returned unserved and the letter along with the documents sent in his permanent home address were not returned back, which clearly indicates that those were received there. It is well settled that each case has to be considered on its own merit on the factual backdrop of that case. By passage of time the earlier decisions of the Apex Court have gone through a lot of changes. Now the view of different courts with regard to supply/service of documents is that once the letters and the documents were despatched by the concerned authority in a disciplinary proceeding in the recorded/notified residential address of a delinquent official as well as in his permanent home, address, it is burden on the delinquent official to receive the same, since he is bound to remain present in that address and receive the communications. The plea of non-supply /non-service of documents can only be accepted in a case where the letter and documents were despatched for service in any other address. In the instant case even though the letters and documents sent in the recorded address of the petitioner were returned back but the documents which were sent in his permanent home address, were received there and at a latter stage when the petitioner asked for those documents, he was also intimated that since the documents sent in his permanent home address were received there, he may collect the same from his home, but after receipt of that letter the petitioner remained silent. As such, this factual aspect clearly indicates that the petitioner had earlier received the letters/documents sent to him at different stages of enquiry. The petitioner also did not choose to remain present and participate/cross examine the witnesses nor choose to examine any defence witness, as he has never applied to the E.O. for the same. In view of the above, the petitioner's plea for non-supply of the charge memo and other documents and not giving him reasonable opportunity to defend himself shall not hold good and also the contention that rules of natural justice have not been followed cannot be accepted. The disciplinary authority having passed a detail order (Annexure- 5) after going through all the materials available on record and the appellate as well as the revisional authorities having passed their orders (Annexures-7 and 9 respectively) after a thorough discussion on all the points raised by the petitioner and having answered those points against the petitioner, there is not much scope to interfere in the matter while exercising jurisdiction in a certiorari proceeding under Articles 226 and 227 of the Constitution of India, where the scope for interference is very limited. In view of the above, we do not find any illegality, irregularity or manifest error of law in this case, which would call for any interference. The writ petition is accordingly dismissed. However, there shall be no order as to costs.

B.P. Das, J.

11. I agree.